

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

MITCHELL KEITH GOODRUM.

Plaintiff,

Case No. 3:22-CV-00216-ART-CLB

v.

STATE OF NEVADA, *et. al.*,

Defendants.

REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE¹

Before the Court is Plaintiff Mitchell Keith Goodrum's ("Goodrum"), application to proceed *in forma pauperis* (ECF No. 2), his complaint, (ECF No. 1-1), and his motion for leave to move case from Tenth Judicial District to the U.S. District Court (ECF No. 1-2). For the reasons stated below, the Court recommends that Goodrum's *in forma pauperis* application, (ECF No. 2), be denied as moot, his complaint, (ECF No. 1-1), be dismissed without prejudice and without leave to amend, and his motion to move case, (ECF No. 1-2) be denied as moot.

I. *IN FORMA PAUPERIS* APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

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¹ This Report and Recommendation is made to the Honorable Anne R. Traum, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 Pursuant to the LSR 1-1: “Any person who is unable to prepay the fees in a civil
 2 case may apply to the court for authority to proceed [IFP]. The application must be made
 3 on the form provided by the court and must include a financial affidavit disclosing the
 4 applicant’s income, assets, expenses, and liabilities.”

5 “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with
 6 some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
 7 Cir. 1981) (quotation marks and citation omitted). A litigant need not “be absolutely
 8 destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,
 9 335 U.S. 331, 339 (1948).

10 A review of the application to proceed IFP reveals Goodrum cannot pay the filing
 11 fee. (See ECF No. 2 at 4.) However, because the Court recommends that this case be
 12 dismissed without prejudice and without leave to amend, the Court recommends that the
 13 motion be denied as moot.

14 **II. SCREENING STANDARD**

15 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
 16 provides, in relevant part, that “the court shall dismiss the case at any time if the court
 17 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a
 18 claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant
 19 who is immune from such relief.” 28 U.S.C. § 1915A(b). A complaint is frivolous when
 20 “it lacks an arguable basis in either law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325
 21 (1989). This includes claims based on legal conclusions that are untenable (e.g., claims
 22 against defendants who are immune from suit or claims of infringement of a legal interest
 23 which clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 24 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th
 25 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
 26 standard applied in the context of a motion to dismiss under Federal Rule of Civil
 27 Procedure 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which
 28 requires dismissal where the complaint fails to “state a claim for relief that is plausible on

1 its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

2 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
 3 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
 4 accept as true all well-pled factual allegations, set aside legal conclusions, and verify
 5 that the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S.
 6 662, 679 (2009). The complaint need not contain detailed factual allegations, but must
 7 offer more than "a formulaic recitation of the elements of a cause of action" and "raise a
 8 right to relief above a speculative level." *Twombly*, 550 U.S. at 555. Particular care is
 9 taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies
 10 to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
 11 Still, a liberal construction may not be used to supply an essential element of the claim
 12 not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is
 13 appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice
 14 of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v.*
 15 *United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

16 **III. SCREENING OF COMPLAINT**

17 In his complaint, Goodrum sues Defendants State of Nevada, Attorney General
 18 Aaron Ford, Tenth Judicial District Court, Senior Judge Robert Estes, Churchill County,
 19 and New River Township (collectively referred to as "Defendants") under 42 U.S.C. §
 20 1983. (See ECF No. 1-1.) The complaint relates to Goodrum's underlying state criminal
 21 case and conviction. (*Id.*) Goodrum alleges that the Defendants, namely Judge Estes,
 22 violated numerous constitutional rights during Goodrum's criminal case and Defendants
 23 were biased against him. (*Id.*) Goodrum requests declaratory and monetary relief. (*Id.* at
 24 51-52.)

25 42 U.S.C. § 1983 aims "to deter state actors from using the badge of their authority
 26 to deprive individuals of their federally guaranteed rights." *Anderson v. Warner*, 451 F.3d
 27 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir.
 28 2000)). The statute "provides a federal cause of action against any person who, acting

1 under color of state law, deprives another of his federal rights[,]” *Conn v. Gabbert*, 526
 2 U.S. 286, 290 (1999), and is “merely . . . the procedural device for enforcing substantive
 3 provisions of the Constitution and federal statutes.” *Crumpton v. Gates*, 947 F.2d 1418,
 4 1420 (9th Cir. 1991). Claims under § 1983 require the plaintiff to allege (1) the violation
 5 of a federally-protected right by (2) a person or official who acts under the color of state
 6 law. *Anderson*, 451 F.3d at 1067.

7 However, § 1983 is not a backdoor through which a federal court may overturn a
 8 state court conviction or award relief related to the fact or duration of a sentence. Section
 9 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts
 10 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they
 11 different in their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir.
 12 2003) (quoting *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take
 13 care to prevent prisoners from relying on § 1983 to subvert the differing procedural
 14 requirements of *habeas corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at
 15 486-87; *Simpson v. Thomas*, 528 F.3d 685, 695 (9th Cir. 2008). When a prisoner
 16 challenges the legality or duration of his custody, raises a constitutional challenge which
 17 could entitle him to an earlier release, or seeks damages for purported deficiencies in his
 18 state court criminal case, which effected a conviction or lengthier sentence, his sole
 19 federal remedy is a writ of *habeas corpus*. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997);
 20 *Heck*, 512 U.S. at 481; *Wolf v. McDonnell*, 418 U.S. 539, 554 (1974); *Preiser v.*
 21 *Rodriguez*, 411 U.S. 475 (1973); *Simpson*, 528 F.3d at 692-93. Stated differently, where
 22 “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction
 23 or sentence,” then “the complaint must be dismissed unless the plaintiff can demonstrate
 24 that the conviction or sentence has already been invalidated.” *Heck*, 512 U.S. at 487.

25 It appears that Goodrum is challenging the constitutionality of his state court
 26 criminal conviction. Consequently, he must demonstrate that his conviction has been
 27 overturned to proceed in an action under § 1983. As he has not done so, his sole relief is
 28 a *habeas corpus* action. The Court, therefore, recommends that the complaint be

1 dismissed without prejudice and without leave to amend.

2 In light of this Report and Recommendation, the Court recommends Goodrum's
 3 motion to move the case, (ECF No. 1-2), be denied as moot.

4 **IV. CONCLUSION**

5 For good cause appearing and for the reasons stated above, the Court
 6 recommends that Goodrum's application to proceed *in forma pauperis*, (ECF No. 2), be
 7 denied as moot, his complaint, (ECF No. 1-1), be dismissed without prejudice and without
 8 leave to amend, and his motion to move case, (ECF No. 1-2), be denied as moot.

9 The parties are advised:

10 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
 11 Practice, the parties may file specific written objections to this Report and
 12 Recommendation within fourteen days of receipt. These objections should be entitled
 13 "Objections to Magistrate Judge's Report and Recommendation" and should be
 14 accompanied by points and authorities for consideration by the District Court.

15 2. This Report and Recommendation is not an appealable order and any
 16 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
 17 District Court's judgment.

18 **V. RECOMMENDATION**

19 **IT IS THEREFORE RECOMMENDED** that Goodrum's application to proceed *in*
 20 *forma pauperis*, (ECF No. 2), and his motion to move case, (ECF No. 1-2), be **DENIED**
 21 **AS MOOT**;

22 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 1-
 23 1); and,

24 **IT IS FURTHER RECOMMENDED** that Goodrum's complaint, (ECF No. 1-1), be
 25 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND**.

26 **DATED:** July 15, 2022.

27 
 28 **UNITED STATES MAGISTRATE JUDGE**